

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LANCE BEAR	§	
v.	§	CIVIL ACTION NO. 6:16cv4
PEACHES ROSS, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
GRANTING RECONSIDERATION AND REOPENING CASE

The Plaintiff Lance Bear, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Court records show that Bear was assessed an initial partial filing fee of \$16.17. He paid this fee but the payment was not noted on the docket due to an inadvertent clerical error. As a result, the lawsuit was dismissed in error for failure to prosecute.

Bear filed a motion asking that the lawsuit be reopened. The Magistrate Judge issued a Report recommending that the motion be granted. No objections were filed to the Report; accordingly, the parties are barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the record in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See*

United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 15) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion to reopen this lawsuit (docket no. 12) is **GRANTED**. It is further

ORDERED that the final judgment in this lawsuit (docket no. 11) is set aside. The lawsuit is reopened for all purposes and placed upon the active docket of the Court.

So Ordered and Signed

Aug 4, 2017



Ron Clark, United States District Judge